oping its resources; and if the legal limit of stock issues has nearly been reached, it does not virtually compel a dividend of the difference between the par and the market value of the new stock.[14]

LEGITIMATION SUBSEQUENT TO BIRTH. — Legitimacy conforms to the usual rule that the state of domicile determines status. This rests upon the peculiar and permanent interest of sovereign in subject.[1] Strictly this status is not triangular, but exists between the child and each parent separately. Legitimacy as to one parent only is a doctrine familiar to the civil law, but not to be found in any common law holding. Nor is legitimacy necessarily dependent upon marriage, though universally associated with it. The proper sovereign may legitimate quite regardless of wedlock.[2] Once impressed upon the natural relation of parent and child, the status persists, surviving change of domicile. Other states admit its existence, though because of local law they may refuse full recognition to its legal consequences. Thus by the feudal law of England realty can descend only upon legitimate persons actually born in wedlock.[3]

A New York court recently lost sight of these principles when it withheld a devise from *antenati*, legitimated in Michigan by subsequent marriage of their parents, because a previous New York decree had refused to recognize the Michigan divorce first obtained by the father from a New York woman. *Olmsted* v. *Olmsted*, 51 N. Y. Misc. 309. In view of a peculiar New York doctrine, it is hard to understand why the court did not recognize that the Michigan man was divorced, though not the New York woman.[4] This was refused, however, in reliance on Haddock *v.* Haddock.[5] But granting that Michigan had under the doctrine of that case no jurisdiction to pronounce the father divorced, it does not follow that Michigan was without jurisdiction to pronounce the children legitimate. Having, by reason of the domicile of all parties concerned, complete jurisdiction *in rem*, she could and did impress the status of legitimacy upon these children *ab præsenti;* whether for reasons wise, mistaken, or arbitrary would seem no concern of New York's. Nor can any local policy[6] or rule of real property[7] be invoked to justify the decision. As the first fruits of Haddock *v.* Haddock[5] it is not reassuring.

The law of legitimacy is not, however, without difficulties. Though courts agree that the state of the father's domicile at the child's birth is the proper one then to confer or withhold legitimacy[1] (at least as to the father), they do not always distinguish two kinds of subsequent legitimation. By the civil law subsequent marriage of the parents effects a valid pre-

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[14] See 18 HARV. L. REV. 541.

[1] *In re* Goodman's Trusts, 17 Ch. D. 266, *per* James, J., at 297.

[2] McDeed *v.* McDeed, 67 Ill. 545.

[3] Birtwhistle *v.* Vardill, 7 Cl. & F. 895. See 6 HARV. L. REV. 379. This is followed in a few states only. Lingen *v.* Lingen, 45 Ala. 410; Williams *v.* Kimball, 35 Fla. 49; Smith *v.* Derr, 34 Pa. St. 126. *Contra*, Caballero's Succession, 24 La. Ann. 573; Dayton *v.* Adkisson, 45 N. J. Eq. 603; Miller *v.* Miller, 91 N. Y. 315; DeWolf *v.* Middleton, 18 R. I. 810.

[4] People *v.* Baker, 76 N. Y. 78.

[5] 201 U. S. 562. See 19 HARV. L. REV. 586.

[6] See Van Voorhis *v.* Brintnall, 86 N. Y. 18; Matter of Hall, 61 N. Y. App. Div. 266.

[7] Miller *v.* Miller, *supra;* Bates *v.* Virolet, 33 N. Y. App. Div. 436.

contract so as to legitimate prior offspring *ab origine*. At birth the state of the father's domicile confers upon his natural child, not legitimacy, but the capacity to become legitimate,[8] — and this irrespective of the situs of birth.[9] This capacity is never lost. The state of the father's domicile at his marriage, if under the civil law, thereby ripens it into legitimacy from the beginning,[8] — again irrespective of the situs of the ceremony.[9] This is not the ordinary fiction of relation. The law opens its eyes wide to the facts, but allows a subsequent act to change their intermediate legal aspect. For legitimation *ab præsenti*, on the other hand, concurrence of two laws is not essential. The proper state may at any time by sovereign fiat confer legitimacy henceforth. This has been done by special legislative act[10] or by general statute conditioned on such act of the parents as public acknowledgment or *de facto* adoption. Confusion arises from American statutes legitimating by subsequent marriage. If designed to follow the civil law and legitimate only *ab origine*, capacity would seem essential;[11] if designed to operate *ab præsenti*, non-essential. The latter has been the prevailing American view.[12] Serious international difficulty arises when parent and child have separate domiciles and either state seeks to legitimate *ab præsenti*. This is undoubtedly letting one state confer status on the subject of another, for legitimate fatherhood and illegitimate childhood co-existing is unthinkable. It is true that one state alone may divorce; but jurisdiction to dissolve status does not argue jurisdiction to create. Adoption in such case would seem impossible.[13] Yet legitimacy differs from adoption and from other statuses in presupposing a natural relation, and this would seem enough to give either state power to confer it.[14] Whether the other state recognized this status to the detriment of its subject would be a local question for it to decide.[15]

LIABILITY OF STOCKHOLDERS ON UNPAID STOCK SUBSCRIPTIONS. — Two theories have been advanced to account for the liability of a stockholder, who has received stock from the corporation at less than par, to make up the difference when called upon to do so by the creditors of the corporation. The "trust fund" theory, first advanced by Judge Story in 1824,[1] regarded the capital stock of a corporation as a trust fund for the creditors, to be protected as such. So, though the stockholder be released by the corporation from the liability to pay full par value, he is yet required to do so when called on by its creditors.[2] This theory has been justly criticised.[3] While

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[8] *In re* Grove, 40 Ch. D. 216. See Dicey, Conf. of Laws, 497. Continental views are inharmonious. See Brocher, Droit Int. Privé, 153.

[9] Udny *v.* Udny, L. R. 1 H. L. Sc. 441.

[10] Scott *v.* Key, 11 La. Ann. 232. No English court has yet been called upon to recognize legitimacy *ab præsenti*.

[11] Smith *v.* Kelly's Heirs, 23 Miss. 167; Fowler *v.* Fowler, 131 N. C. 169.

[12] Adams *v.* Adams, 154 Mass. 290; Caballero's Succession, *supra*.

[13] Foster *v.* Waterman, 124 Mass. 592.

[14] Blythe *v.* Ayres, 96 Cal. 532. But see Minor, Conf. of Laws, 215; 65 L. R. A. 183, n.

[15] Irving *v.* Ford, 183 Mass. 448.

[1] Wood *v.* Dummer, 3 Mason (U. S. C. C.) 308.

[2] Scovill *v.* Thayer, 105 U. S. 143.

[3] O'Bear Jewelry Co. *v.* Volfer & Co., 106 Ala. 205. See Hollins *v.* Brierfield Coal and Iron Co., 150 U. S. 371, 381.